

*The City of Carlsbad Housing & Neighborhood Services*  
**A REPORT TO THE HOUSING  
COMMISSION**

Staff: Scott Donnell  
SENIOR PLANNER  
Item No. 1

**DATE:** January 9, 2014

**SUBJECT:** Affordable Housing Impact Fee

**I. RECOMMENDATION**

That the Housing Commission **ADOPT** Housing Commission Resolution No. 2014-001 recommending the City Council **ACCEPT** the “Affordable Housing Impact Fee Nexus Study” prepared by Keyser Marston Associates, Inc., and dated September 2013 and **APPROVE** (1) an affordable housing impact fee, not to exceed \$20 per square foot, to be paid by developers of market-rate rental housing to offset the affordable housing demand caused by the construction of market-rate rental housing; and (2) the “Construction Costs Index” (CCI) published by Engineering News Record as the index (with no ceiling) for fee level adjustment, all based upon the findings contained in the resolution.

**II. BACKGROUND**

This item, to recommend approval of an affordable housing impact fee on market-rate rental housing, was originally scheduled for the September 19, 2013, Housing Commission meeting. Just prior to the meeting, the Building Industry Association of San Diego requested the item be pulled from the agenda. In response, the Housing Commission continued consideration of the affordable housing impact fee to a date uncertain. The BIA email requesting this item be pulled is attached.

In the email, the BIA states its opposition to the proposed fee and thus its request to pull it from the agenda. Staff’s response to the BIA’s email is provided in the analysis section below.

The staff report recommendation prepared for the September 19 Housing Commission meeting remains the same. This recommendation is reflected above. The September 19 staff report is attached and contains information about the proposed fee that is still valid and has not changed. Furthermore, the September 2013 Affordable Housing Impact Fee Nexus Study prepared by Keyser Marston Associates, Inc. (KMA), which establishes the basis for the proposed fee, also remains on-point.

Staff has revised the resolution prepared for the September 19 meeting. It now includes findings regarding the nexus or relationship between the construction of market-rate rental housing and the need for affordable housing that the new market-rate housing creates, the “rough proportionality” of the proposed fee to the impacts the fee is planned to offset, and the

inapplicability of Proposition 26 regarding new taxes. More information about the content of these findings is provided in the analysis section.

This subsequent cover report prepared for the Commission's January 9 meeting acknowledges the BIA's request, responds to the organization's email and reports on relevant events since the Commission's September meeting. Further, as with several other interest groups, housing developers and individuals the BIA received notice of both the September 19 and January 9 meetings approximately ten days in advance of both meetings. City staff and the BIA also met in December to further discuss the proposed fee. Further information on that meeting is provided below.

Staff notes the receipt of information and correspondence from the BIA and San Diego Housing Federation in late December that is relevant to this item. These items are attached. While staff has not thoroughly reviewed them before the preparation of this report, we can respond to the items at the Housing Commission meeting.

### **III. ANALYSIS**

#### *September 16, 2013, BIA Email*

In its email, the BIA makes several points regarding the proposed affordable housing impact fee. A paraphrase of several of these points and staff's responses follow.

- *The BIA's opposition to the affordable housing impact fee is not a challenge to the city's existing inclusionary housing ordinance.* Though fee approval would likely not result in an amendment to the inclusionary housing ordinance, the proposed fee helps make the city's inclusionary program "whole" by enabling the city to again realize affordable housing gains through market-rate rental housing. The 2009 *Palmer/Sixth Street Properties, L.P. v. City of Los Angeles* court decision restricts a jurisdiction's ability to apply inclusionary requirements to rental housing in most instances; doing so would interfere with a landlord's right to establish a unit's initial rent. The proposed fee would help fulfill the inclusionary program's objectives to provide affordable housing in a way not contrary to *Palmer*. The fee also enables equitable sharing of the responsibility to provide affordable housing among ownership and rental housing developers.
- *The affordable housing impact fee forces the market rate housing industry to fully bear the financial consequences stemming from the collapse of redevelopment agencies in California.* Redevelopment agencies across the state, including the Carlsbad Redevelopment Agency, were dissolved by legislation in early 2012. However, the city's primary source of affordable housing funding has been its Housing Trust Fund in which developer-paid inclusionary housing in lieu fees and affordable housing credits are deposited. Further, the affordable housing impact fee is not at all proposed to replace any redevelopment funding but instead is proposed in response to and in a manner consistent with the *Palmer* court ruling.

- *The cost to build housing affordable will be increased dramatically by the new fees proposed by City staff, exacerbating the housing shortage which already exists.* KMA acknowledges this concern in recommending potential affordable housing impact fee levels. Accordingly, on page 10 of the Affordable Housing Impact Fee Nexus Study (an attachment to the proposed resolution), KMA advises:

When considering fee levels, there are several economic or real estate factors that may be taken into account in determining potential fee levels. A primary concern is that the fee levels not be so onerous that they significantly constrain the development of new rental units.

As discussed, the nexus analysis establishes the maximum supportable fee level from a legal nexus perspective. The KMA methodology employs a series of conservative assumptions designed to ensure that the analysis does not overstate the impact of residential housing construction on the demand for new affordable housing. KMA recommends that cities select a fee level that leaves a margin between the fee and the maximum established by the nexus analysis. This allows for minor changes to the many inputs, assumptions, and calculations employed in the nexus analysis while assuring that the adopted fee remains below the supported nexus amount.

Furthermore, KMA considered three approaches to provide the city with a framework for setting fee levels. One of these approaches was “the economic impact [to market-rate rental developments] of incorporating 15% affordable housing development on site.” As discussed on page 12 of the attached study,

...KMA estimates this economic impact to range between \$16,300 and \$27,300 per unit, or \$18 to \$27 per SF [square foot]. These figures represent the economic burden previously absorbed by the marketplace under the City’s Inclusionary Housing Ordinance prior to the Palmer decision.

Based on its study and the need to ensure suggested fee levels are appropriate, KMA recommends an impact fee that does not exceed \$20,000 per unit or \$20 per square foot. City staff concurs and notes this is the maximum recommended fee.

- *The proposed fee on new rental housing is illegal.* The proposed fee does not conflict with the Costa-Hawkins Act as it does not interfere with a landlord’s right to set a unit’s initial rent, a basic provision of the act.
- *Passage of AB 1229 affects the legality of the proposed fee.* This bill was vetoed by the governor in October 2013. If approved, it would have enabled Carlsbad and other jurisdictions to once again apply inclusionary requirements to rental projects despite the *Palmer* court ruling.

Despite the BIA's claim in its email, AB 1229 becoming law was not a prerequisite for the city to approve the affordable housing impact fee. To the contrary, in part because the bill was not signed, Carlsbad is pursuing approval of the affordable housing impact fee.

- *BIA rejects the argument that a new house or apartment unit built causes the need for a new (affordable) housing. There simply is no "essential nexus" between the construction of new housing and the need for affordable housing.* Opposite the BIA's assertion, the Affordable Housing Impact Fee Nexus Study establishes the nexus, or "reasonable relationship," between the construction of market-rate rental housing and the need for affordable housing that the new market-rate housing creates. Moreover, by establishing the nexus as well as demonstrating the proposed fee is in proportion to the impacts on affordable housing need, the proposed fee is consistent with applicable state and federal court cases, which are discussed in the attached resolution findings.
- *Fees vary among cities.* Staff concurs that fees may vary widely among jurisdictions. However, it is difficult to pinpoint all the reasons for fee variances. While land and housing costs and housing types are a factor, other reasons may include the actual fee amount approved, which may differ from that recommended by a nexus study, and a community's affordable housing objectives.

In 2011, Solana Beach approved an affordable housing impact fee on market-rate rental housing of \$25.28 per square foot based on a nexus study prepared by KMA. This is more than the recommended fee for Carlsbad of \$20 per square foot; the City Council may ultimately approve a fee below or above that figure.

- *The proposed affordable housing impact fee is a new tax on housing and is required by California Proposition 26 to be approved by voters.* Proposition 26, passed in November 2010, limits state and local governments' ability to fund public services via fees. The recommended fee is excluded from the Proposition 26 definition of a tax that requires voter approval as it is "a charge imposed by a condition of property development."
- *BIA opportunity to discuss fee alternatives and affordable housing policy reforms.* Staff met with BIA representatives on December 17 primarily to listen the organization's concerns and alternatives. Subsequent to the meeting, the BIA provided written information to expand on their position. This information is provided as an attachment but has not been thoroughly reviewed by staff. However, staff notes that most recommendations expressed in the attached "BIA Tool Kit," such as paying in lieu fees, constructing inclusionary units off-site, and increasing densities or permitting development standards modifications, are already allowed by the city's affordable housing requirements and have been successfully applied in a number of affordable developments.

**IV. EXHIBITS**

1. Housing Commission Resolution No. 2014-001, including attachment: Affordable Housing Impact Fee Nexus Study, September 2013
2. September 19, 2013 Housing Commission staff report on the affordable housing impact fee (without attachments)
3. September 16, 2013, email from Building Industry Association of San Diego
4. Information provided by BIA on December 26, 2013:
  - i. BIA Tool Kit/Policies for Communities Seriously Interested in Improving Housing Affordability
  - ii. Affordable Housing Credit Bank – concept outline
  - iii. Reason Public Policy Institute study: “Housing Supply and Affordability: Do Affordable Housing Mandates Work” (April 2004)
5. December 23, 2013, letter from San Diego Housing Federation